

**Approved 9/5/07**

**TOWN OF CUSHING  
PLANNING BOARD  
Minutes of Meeting  
August 1, 2007**

**Board Present:** Chairman Dan Remian, David Cobey, Bob Ellis, Evelyn Kalloch, Frank Muddle, CEO Scott Bickford

**Absent:** None

**1. Call to Order:** Chairman Remian called the meeting to order at 6:02 P.M., took a roll call and stated that there was no recording secretary present. He asked that members be concise and speak when recognized by the chair since minutes would be written from the tape recording only.

**2. Approve the Minutes of the 7/18/07 meeting:** The members took time to read the minutes. Mr. Ellis noted on Page 2, the next to last paragraph, a reference to "Subdivision Ordinance", which he said should have been "Subdivision Regulations". Mr. Cobey said the word "trees" should be "treatment" on Page 3, Item #7, Paragraph 3, Line 7. Mr. Muddle could not find in the first three paragraphs of Page 5 a motion and vote that he recalled had been taken on Article 7.8. CEO Bickford said the tapes and minutes were produced in order to have an accurate record of what had taken place in the past; he felt the words "Subdivision Ordinance", rather than "Subdivision Regulations", were written because that was what had actually been said. He suggested that the tape be reviewed to see if Mr. Muddle's recollection on Article 7.8 was accurate.

**ACTION:** Mr. Remian made a motion, seconded by Mrs. Kalloch, to approve the minutes as corrected.  
Carried 3-0-2 (Mrs. Kalloch and Mr. Muddle abstained)

**3. Correspondence:** None

**4. Old Business:** Chairman Remian said he had concerns about two of the decisions made at the last meeting as he felt they left the Board open to some problems. The first was the Corbett application, because he had learned that the land had been sold prior to subdivision approval, which was a violation of the Subdivision Regulations [SR], and because the change in lot lines made this a non-conforming lot due to insufficient frontage. He asked the Board to consider revisiting that vote. Second, Mr. Remian stated that the application for Pine Ridge Acres was a modification to a subdivision plan, which required a pre-application and Board review in that respect. He asked the wishes of the Board.

Mrs. Kalloch said she had typed up the sequence of purchases for the Baker land and had provided the other members with a copy of the original PB decision to grant a 1-acre lot in a subdivision, approved by the PB in 1989. Mr. Baker had subsequently decided that was not sufficient acreage, Mrs. Kalloch said, and he bought an additional 4.09 acres from Phil Young. She said that did not go before the PB because it was an addition to the subdivision and the land was sold to an abutter. Mrs. Kalloch said Mr. Baker had sold Lot 64-18 [Lot 18] in September 2006, thereby creating Lot 64-19 [Lot 19] without road frontage. She had provided reference numbers for these deeds to the members

Mr. Ellis said the deed change for access between the two parties was what needed to take place and he felt that was not the trigger for a subdivision review. The first thing any applicant needed to do, he said, was to come to the town to see if he needed to apply for anything. He thought there was nothing here that required an application; the history was a moot point if the applicant simply wanted to straighten out an access issue between the two landowners. Mr. Ellis said this did not warrant the PB reviewing any change to a subdivision at all. He said the lot was already there and not created on September 22, as alleged by Mrs. Kalloch. (Mrs. Kalloch responded, but her words were drowned out on the tape by the beeping of a truck backing up.)

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<sup>1</sup> The secretary had listened to the tape when writing the minutes but subsequently checked the written notes of the Recording Secretary and confirmed that no motion or vote had occurred on Article 7.8 at this meeting. Such a vote had been taken, however, at the 6/20/07 meeting.

Mr. Ellis said the issue of frontage went back to the standards about fronting on a way. He said this lot was created when it was approved and anything illegal about it was not a PB review issue. He stated that evidently the PB had interpreted the frontage requirements the way he read them, saying that "Lots, if they are on a road, need to have the 150', but it doesn't say they must have the 150'." Mr. Remian responded that the issue for him was that a lot had been added without subdivision approval. Mr. Muddle asked if both lots were originally in the subdivision. Mrs. Kalloch replied that the PB approved the 1-acre lot (Lot 18) in the subdivision and Mr. Baker subsequently added 4.09 acres (Lot 19), bought from Phillip Young. Mr. Muddle said the combined lot, at that time, had frontage. Mr. Cobey asked what made it a combined lot; it was, instead, two lots. Mr. Remian agreed and Mr. Cobey contended that Lot 19 was never part of the subdivision. Mr. Remian said that was indeed the problem.

Mr. Muddle asked if there was now an agreement to give Lot 19 a ROW to the road. He stated that currently Lot 19 was a back lot with no access or frontage, which made it an illegal lot. Mr. Cobey said the owner of Lot 19 was trying to make an agreement for access with the owner of Lot 18, which was an agreement between two human beings, and it did not make Lot 19 part of the subdivision. Mrs. Kalloch said that, to the best of her knowledge, any changes made to an existing subdivision must come before the PB. Mr. Cobey asserted that this did not represent a change to a subdivision.

Cheryl Waterman, representing the Bakers, said that there had been common ownership of Lots 18 & 19, then Lot 18 had been sold and Lot 19 remained outside the subdivision. She said there was a picture in the registry of Lot 18 as part of the subdivision approved in 1989. That picture had now been modified by an easement across it; therefore, what had been modified was Lot 18, only so much as there was now an easement across it. The Bakers were asking the PB to look at the impact that easement would have over Lot 18 to access Lot 19. She said that if this were approved, the prospective buyer of Lot 19 understood that the conditions incumbent upon all of the other lot owners would also be his responsibility. Ms. Waterman said all abutters had been contacted and provided written confirmation that they had no issues with granting an easement across Lot 18 to provide access to Lot 19. She confirmed for Mr. Muddle that Lot 19 was not part of the subdivision.

Mr. Ellis said he thought anyone had the right to ask owners of a subdivision to participate in their access way. Mr. Remian said he was not concerned with the access issue, but rather that Lot 19 was an illegal lot because it was a modification to a subdivision that never came before the Board. CEO Bickford said he thought the question was whether land in a subdivision could be joined to an abutter without any approvals. He said the answer was yes, though that did not constitute subdivision. Mr. Bickford continued, saying that when that land was sold, changed or modified by the owner it was probably appropriate. However, the CEO said, the problem arose when the land was sold or divided, resulting in a lot outside the subdivision that did not have the required frontage. He said the correct question was whether Lot 19 was a non-conforming lot, now landlocked, created by a party.

Mr. Cobey asked if Lot 19 was part of the property that was subdivided to create the subdivision. Mrs. Kalloch said it was. Mr. Muddle said the Board should stick to discussing the subdivision. Mr. Remian said Lot 19 was being added to the subdivision, but some members disagreed. Mrs. Kalloch said Lot 19 would have the same covenants and requirements as the rest of the subdivision. James Tower said that was a civil agreement and the PB had made the right decision for the right reasons last month. He said Lot 19 was still free and independent, as it always had been, and had never been part of the subdivision. He stated that one division could be made within a subdivision every five years without coming back to the Board; therefore, the Board did not have jurisdiction over every dividing. CEO Bickford suggested the Board get a legal opinion from MMA as to whether this question belonged before the Board. He added that he did not believe a subdivision could be divided every five years without review and said that all lot line changes in a subdivision had required approval since 1973. Mr. Muddle and Mr. Ellis argued that this did not change the subdivision. Mr. Muddle and Mrs. Kalloch wanted to ask MMA's opinion.

**ACTION:** Mrs. Kalloch made a motion, seconded by Mr. Remian, that the Board reconsider the Baker application. Failed 2-3-0 (Mrs. Kalloch and Mr. Remian voted in favor)

Ms. Waterman asked for a decision and the Board referred her to the motion passed at the last meeting.

The chairman now brought up the subject of the Corbett application for a subdivision amendment. He said the Board had the issue of a lot that was created without proper frontage, in addition to the issue of a lot being sold before subdivision approval. Mrs. Kalloch said "he" gave away 100' by giving a deed to Andy Harding, leaving "him" with 50'. Mrs. Kalloch said Lovers Lane was a private road and Mr. Remian said that meant the only issue was the violation of the subdivision law (sale before approval). Mrs. Kalloch said she did not know what could be done about it now, because the deed had been processed. Chairman Remian said the Board had no process to do it and could levy no fines, so it was a moot point.

**5. Application for a Building Permit for Renovation to the Gardner Brown Estate on Shay Lane, Map 5, Lot 89, Presented by Richard Higgins, Architect:** Architect Richard Higgins said the applicant was asking to put a foundation under the Gardner Brown estate. He had determined that this was the best way to salvage the building, which currently sat on rotting piers. Mr. Higgins said he wanted to lift the building 2' and put a foundation under it. The CEO had advised him to come before the PB. Mr. Higgins said the building was on a heavily wooded lot with over 70' of setback. He said his drawing and aerial photographs depicted the situation. Mrs. Kalloch ascertained that the building was 72' from the bank, which had been stabilized with rip rap.

Mr. Ellis said the only thing the PB was held to was Article 12(C)(1)(b), which said height could not be increased by more than 3'. He said he saw no problem with the ordinance in regard to this application. In response to a question from Mrs. Kalloch, the CEO said that a foundation did not trigger the 30% expansion rule. Rather, he said, the question was whether the building could be relocated to be more conforming, which Mr. Higgins had shown it could not be, due to limitations of the location.

**ACTION:** Mr. Ellis made a motion, seconded by Mrs. Kalloch, to approve the application.  
Carried 5-0-0

**6. Continuation of Robbins Mountain Subdivision Application, Map 5, Lots 84, 85 and 86, Presented by James Tower:** Mr. Ellis said that, upon review of the ordinance, he had discovered that he had misled the Board and made another mistake pertaining to the lot across the street. It now appeared to him that the ordinance said that when a lot could not conform to lot size and frontage it did not need a variance. Mr. Remian said the Board did not have a shoreland zone application and it was thus inappropriate to discuss this. He then said the town had today received an application from Mr. Tower for a use permit; however, since this was not on the agenda, it should be put off until the next meeting.

Mr. Tower said that the review of this lot, occurring simultaneously with the subdivision review, was appropriate and he wanted to be sure the Board agreed with his interpretation. Mr. Tower said a lot of people had done some reading after last night's Board of Appeals meeting and he referred the Board to Section 12(A) of the Shoreland Zone Ordinance [SZO]: "It is the intent of this ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this ordinance or amendments shall be allowed to continue, subject to requirements set forth in this section." Mr. Tower said it was important to establish that these two lots were actually lots of record prior to adoption of the SZO. The developer then directed the Board to Section 12(E)(1): "A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership from adjoining lots, and that all provisions of the ordinance except lot size and frontage can be met." He said he believed that no variance was required. He then read from Section 12(E)(3): "If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this ordinance, and if any of these lots do not individually meet the dimensional requirements of this ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements." Mr. Tower said he was combining the two lots in his proposed use. He asked that the Board accept his application, though he expected no action on it this evening.

The chairman asked the Board if it thought the application was complete, but Mr. Bickford said that should not be considered because it was not on the agenda. The chairman said he had not meant to say "completeness". Mr. Ellis suggested sending notices to abutters.

**ACTION:** Mr. Remian made a motion, seconded by Mr. Cobey, that the Board accept the application for the next regularly scheduled meeting and that the abutters be notified.  
Carried 5-0-0

Mr. Tower agreed to send out the abutters' notices. He also confirmed for Mr. Cobey that his application was for both a use permit and a construction permit. Returning to the Robbins Mountain Subdivision, Mr. Cobey asked if Mr. Tower had any problem noting the recreation lot as common area. Mr. Tower replied that he did and he requested the Board continue consideration of the subdivision without any reference or thought to this parcel of land, which would be reviewed under a separate application.

Mr. Remian said a motion had been made at the last meeting that the Board check with the DEP regarding storm water. He said he and Mr. Cobey had met with Mr. McLaughlin of DEP, who said he couldn't do anything unless he had it in writing from the project manager. The chairman had written to the project manager requesting his input;

not response had yet been received. The Board had asked that the culverts be shown on the drawing, which they now were. Mr. Remian asked if Mr. Tower had given his latest drawings to the Fire Chief. Mr. Tower said he had not.

Mr. Cobey said nothing on the drawing designated the road as a common area. Mr. Tower said he had not yet decided if the road would be a common area and was not required to make it such. Mr. Cobey said he was concerned about this because of the situation on Racoon Road, where homeowners were maintaining a road they did not own. CEO Bickford said that SR Article 9.9 (Road standards) did say that road maintenance should be included in the covenants. Mr. Cobey confirmed that Mr. Tower's covenants covered road maintenance, which Mr. Ellis said met Article 9.9(K). There was further discussion of common areas. Mr. Bickford asked when a lot owner became a member of the Homeowners' Association and Mr. Tower replied that the covenants stated that every person who bought a lot became a member and membership traveled with the lots.

Absent information necessary for continuation of review, the chairman asked that the application be tabled. Mr. Tower confirmed that the outstanding items were responses from the DEP and the Fire Chief, checking the minutes on the Article 7.8 vote and a copy of the court case concerning Article 7.8. Mr. Tower agreed to table until the next meeting.

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Muddle, to table the application until the next meeting.  
Carried 5-0-0

#### **7. Adjournment:**

**ACTION:** Mrs. Kalloch made a motion, seconded by Mr. Cobey, to adjourn at 7:30 P.M.  
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey  
Recording Secretary